

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Charles Eric Stewart,

Petitioner,

v.

William Gittere,

Respondent.

Case No.: 2:21-cv-02088-APG-VCF

Order Referring Petition to Court of Appeals

[ECF No. 1]

Petitioner Charles Eric Stewart has filed a counseled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. The petition is a second or successive petition, and I refer it to the court of appeals for a determination whether to authorize the filing of the petition.

On October 19, 2006, the state district court convicted Stewart of one count of second-degree murder with the use of a deadly weapon. Stewart filed a habeas corpus petition under 28 U.S.C. § 2254 in this court.¹ That petition contained three grounds. The court determined that ground 3, containing multiple claims of ineffective assistance of counsel, was unexhausted.² The court denied Stewart's motion to stay the action while he exhausted the ground in the state courts.³ The court then dismissed ground 3 upon Stewart's motion.⁴ The court then denied the remaining two grounds for relief on their merits.⁵ Both this court and the Ninth Circuit denied Stewart a certificate of appealability.⁶

¹ *Stewart v. Neven*, Case No. 2:09-cv-01063-PMP-GWF.

² *Stewart v. Neven*, ECF No. 29. *See also* 28 U.S.C. § 2254(b).

³ *Stewart v. Neven*, ECF No. 32.

⁴ *Stewart v. Neven*, ECF No. 35.

⁵ *Stewart v. Neven*, ECF No. 37.

⁶ *Stewart v. Neven*, ECF No. 37, 41.

1 Stewart now has filed the current petition. Because the court has denied the earlier
2 petition on its merits, the current petition is a second or successive petition.⁷ Stewart thus needs
3 authorization from the Ninth Circuit to file a second or successive petition.⁸ The Ninth Circuit
4 has not transferred the action to this court with authorization, Stewart has not attached
5 authorization to his petition, and my search of the Ninth Circuit's on-line docket has not found
6 any application for authorization. I will refer Stewart's petition to the Ninth Circuit for a
7 determination whether to authorize the filing of a second or successive petition.⁹

8 IT THEREFORE IS ORDERED that the Clerk of the Court refer this action to the United
9 States Court of Appeals for the Ninth Circuit under Circuit Rule 22-3(a), for a determination
10 whether to authorize the filing of a second or successive petition.

11 IT FURTHER IS ORDERED that Clerk of the Court administratively close this action.

12 DATED: November 23, 2021

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16 ANDREW P. GORDON
17 UNITED STATES DISTRICT JUDGE
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23 ⁷ 28 U.S.C. § 2244(b).

⁸ 28 U.S.C. § 2244(b)(3).

⁹ See Circuit Rule 22-3(a).